



CITY COUNCIL AGENDA ITEM

TO: Mayor & City Council

DATE: December 11, 2014

FROM: John McDonough, City Manager

AGENDA ITEM: Consideration of Approval of the Purchase and Sale Agreement with the Sherwin-Williams Company

MEETING DATE: For Submission onto the December 16, 2014, City Council Regular Meeting Agenda

BACKGROUND INFORMATION: (Attach additional pages if necessary)

See attached:

Memorandum
Purchase and Sale Agreement
Resolution

CITY MANAGER APPROVAL: _____

PLACED ON AGENDA FOR: **12/16/2014**

CITY ATTORNEY APPROVAL REQUIRED: (☒) YES (☐) NO

CITY ATTORNEY APPROVAL: _____



TO: John McDonough, City Manager

FROM: Wendell K. Willard, City Attorney
Cecil McLendon, Assistant City Attorney

DATE: December 10, 2014, for Submission onto the Agenda of the December 16 City Council Meeting

ITEM: Consideration of Approval of the Purchase and Sale Agreement with the Sherwin-Williams Company

Assistant City Attorney's Recommendation:

The City Manager recommends that the Mayor and City Council approve the Purchase and Sale Agreement with the Sherwin-Williams Company to purchase certain lands for City Center.

Background:

The subject property is located at 245 Johnson Ferry Road, and is part of the City Center project. After initial negotiations to acquire the property were unsuccessful, the City filed condemnation proceedings to inspect and acquire the subject property. Discussion and negotiations continued with the owners, and the owners have agreed to sell the subject property to the City. The mutually agreed-upon sales price includes acquisition of the subject property, settlement of any possible claims of lost business, and any possible claims for relocation costs. If the Mayor and Council approve the Purchase and Sale Agreement, the City will dismiss its condemnation action at Closing.

The purchase price for the subject property is Two Million Dollars (\$2,000,000.00). This price includes acquisition of the subject property along with the settlement of any possible claims of business loss, relocation costs, or other damages which could have been pursued in the condemnation action.

Alternatives:

If the City does not approve the Purchase and Sale Agreement, the owner and the City may attempt to renegotiate the terms of the Agreement or the City may pursue other avenues of acquisition.

Attachments:

Exhibits
- Purchase and Sale Agreement

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (hereinafter "Agreement") is made and entered into as of the Effective Date specified below, by and between THE SHERWIN-WILLIAMS COMPANY f/k/a THE SHERWIN-WILLIAMS DEVELOPMENT CORPORATION, an Ohio corporation authorized to do business in the State of Georgia (hereinafter "Seller"), and CITY OF SANDY SPRINGS, a municipal corporation organized and existing under the laws of the State of Georgia (hereinafter called "Purchaser").

WITNESSETH:

1. Purchaser hereby agrees to purchase and take from Seller, subject to and in accordance with all of the terms and conditions of this Agreement, the following property:

Those certain parcels of land comprising a portion of what is currently known as Tax Parcel 17-0089-LL-114-8 in Sandy Springs, Fulton County, Georgia land lying and being in Land Lot 89, of the 17th District, of Fulton County and as more particularly described as set forth on Exhibit A attached hereto, with the existing building, paving, fencing, and such other land improvements as are located thereon and owned by the Seller, including all lighting fixtures, all electrical, mechanical, plumbing, air conditioning, and any other systems or fixtures as are attached thereto (collectively, the "Improvements"), and all plants, trees and shrubbery now a part of the property (all such property referred to collectively herein as the "Property"). The Property is located at 245 Johnson Ferry Road, Sandy Springs, Georgia 30328 according to the current system of addressing property in the City of Sandy Springs, Georgia.

2. Purchase Price, Method of Payment. The purchase price for the Property, hereinafter called the "Purchase Price," shall be **TWO MILLION AND NO/100 DOLLARS (\$2,000,000.00)**. The Purchase Price, subject to the prorations and adjustments hereinafter described, shall be paid by Purchaser to Seller on the Closing Date by wire transfer to an account designated by Seller, or other payment medium acceptable to Seller.

3. Intentionally Deleted.

4. Title.

(a) Warranty of Title. Seller warrants that, as of the Effective Date, Seller owns Fee Simple Title to the Property. Within ten (10) days from the Effective Date (the "Title Objection Period"), Purchaser shall search title to the Property to confirm that Seller owns "Good and Marketable Fee Simple Title" (as hereinafter defined). In the event the title report indicates Seller does not own Good and Marketable Fee Simple Title to the Property, Purchaser shall notify Seller, within the Title Objection Period, that it elects to either (A) take such title from Seller without reduction of the Purchase Price, or (B) terminate this Agreement, in which event this Agreement shall become null and void. "Good and Marketable Fee Simple Title" shall mean fee simple title as is insurable by the title insurance company selected by the Purchaser under such title company's standard ALTA form of Georgia owner's policy of title insurance, subject only to the following, hereinafter called the "Permitted Exceptions": (i) the standard exclusions therein; (ii) ad valorem taxes assessed against the Property not due and payable on or before the Closing Date; (iii) all zoning and land use laws, codes and regulations, (iv) all matters that would be shown by a true and accurate survey of the Property, and (v) such other title matters accepted by Purchaser.

(b) **Removal of Monetary Encumbrances.** Notwithstanding any other provision of this Agreement, the Seller shall be obligated to remove, not later than Closing, all security deeds, mortgages, tax liens, financing statements and other liquidated financial encumbrances of any kind affecting Seller's title to the Property incurred by, against or at the instance of the Seller ("Monetary Encumbrances"). The closing attorney shall withhold and disburse from the Purchase Price a sufficient amount thereof to satisfy all such Monetary Encumbrances.

(c) **Changes in Condition of Seller's Title after the Effective Date.** Seller agrees and covenants with the Purchaser that, from and after the Effective Date, Seller will not take any action or allow any condition to exist which will adversely affect the condition of the Seller's title on the Effective Date.

5. Due Diligence

(a) **Testing and Related Activities.** After Purchaser has notified and approved this Agreement in accordance with Section 28 of this Agreement, Purchaser may enter upon the Property for the purpose of conducting environmental testing; provided, however, Purchaser and its representatives shall not enter the building located on the Property without prior notice to and written consent from Seller. In the event Purchaser desires to perform any invasive inspection, sampling, testing or investigation of the Property, Purchaser must obtain Seller's prior written approval of the scope and method of such testing prior to Purchaser's commencement of the work. If Purchaser desires to have a Phase II environmental test of the Property conducted in order to determine whether contaminants exist at the Property ("Phase II Testing"), such Phase II Testing must be performed by an experienced environmental consultant, at Purchaser's sole cost and expense, and the scope of such work must be approved in advance in writing by Seller. Seller's representatives shall have the right to be present during and to monitor the Phase II Testing, if Seller elects. Purchaser will not disclose to Seller or any third party the results of the Phase II Testing. Additionally, in any contract relating to the performance of the Phase II Testing (including, without limitation, the contract with Purchaser's environmental consultant), Purchaser shall include a provision stating that the party with whom Purchaser is contracting is not permitted to make any disclosure to Seller of information or results from the Phase II Testing.

(b) **Testing and Related Activities at Purchaser's Sole Risk and Expense.** Any inspection, testing or investigation of the Property by Purchaser or its agents shall be performed at the sole cost and risk of the Purchaser, and Purchaser hereby releases Seller from any claims arising from Purchaser's investigations and activities on the Property. Purchaser agrees to promptly restore any portion of the Property damaged or disturbed as result of Purchaser's exercise of its inspection rights hereunder. All information provided to the Purchaser by the Seller, or any person or entity acting on Seller's behalf, is without any representation or warranty of any kind, and shall be used by Purchaser, if at all, in Purchaser's sole discretion and at Purchaser's sole risk.

(c) **Insurance for Testing and Related Activities By Purchaser.** Prior to conducting any on-site inspection, testing or investigation of the Property, other than mere visual examination, Purchaser and each contractor and/or consultant participating in any such activity shall obtain, and during the period of such access, inspection, investigation or testing shall maintain at Purchaser's expense commercial general liability insurance and personal injury liability coverage with recognized and generally reputable insurance companies with policies having limits for property damage, bodily injury and death of not less than One Million Dollars (\$1,000,000) for any one occurrence.

(d) Results of Tests, Inspections and Investigations. Purchaser agrees that any report, analysis or result from any of Purchaser's environmental tests, inspections or investigations (including, but not limited to, any Phase II Testing) shall not be used by Purchaser or Purchaser's successors, affiliated entities, affiliated agencies or authorities, attorneys, representatives or officials in determining the appraised or fair market value of the Property in any context, including any condemnation case, action or proceeding. Further, Purchaser and Purchaser's successors, affiliated entities, agencies and authorities, attorneys, representatives and officials shall not use the results or any information arising from any test, inspection or investigation permitted or allowed under this Agreement in the Litigation (as defined in Section 26(c) of this Agreement) or in any future litigation involving Seller.

(e) Results of Tests and Related Activities and Impact On This Agreement. Notwithstanding anything in this Agreement to the contrary, Purchaser may not terminate or alter this Agreement, the Purchase Price, or the Closing Date as a result of any test, inspection or investigation hereunder unless such activity reveals an environmental contamination on the Property that will require more than \$2.5 million to remedy (a "Material Event"). Upon the occurrence of a Material Event, but only upon the occurrence of a Material Event, Purchaser may, within fifteen (15) days of first learning of a Material Event, terminate this Agreement by sending a written notice to Seller stating only that Purchaser is terminating this Agreement under Section 5(e).

6. Intentionally Deleted.

7. Closing. The term "Closing," as used herein, means the consummation of the purchase and sale of the Property pursuant to this Agreement. The Closing shall include, *inter alia*, the delivery and acceptance of the Purchase Price by the Seller and the execution and delivery by the Purchaser and Seller as applicable of the Closing Documents and other Deliveries described herein.

(a) Closing Date. The term "Closing Date," as used herein, means the date on which the Closing is consummated.

(1) Closing Date. The Closing shall take place on or before January 15, 2015 at a time and on a date specified by the Purchaser after at least five (5) business days prior written notice to the Seller (or if no such notice has been received, on January 15, 2015 at 1:00 p.m. local time) (the "Closing Date") at City Hall, 7840 Roswell Road, Sandy Springs, Georgia 30350; or at the law offices of the closing attorney, as elected by Purchaser. The Closing; however, shall not occur before the date of January 1, 2015.

(b) Closing Documents. On the Closing Date:

(1) Seller Deliveries. Seller shall deliver to Purchaser the following documents and instruments, all in a standard form and substance reasonably satisfactory to legal counsel for the Purchaser and Seller, duly executed by or on behalf of Seller (where applicable under oath or in proper legal form for recording): (i) a limited warranty deed conveying Seller's Fee Simple Title to the Property to the Purchaser, subject only to Permitted Exceptions; (ii) any curative documents which the Seller may agree to furnish in connection with the Closing; (iii) a Seller's affidavit of ownership with respect to the Property, qualified to the knowledge of Seller and providing that nothing contained therein shall in any way enlarge or otherwise modify the warranty of title given in the deed of conveyance at Closing; and (iv) such tax certifications, affidavits of authority and residency, affidavits concerning the participation of brokers, a waiver of lien by the listing broker, and other customary closing documents as reasonably requested by the Purchaser, Purchaser's title insurance company or the closing attorney.

(2) Purchaser Deliveries. Purchaser shall pay the Purchase Price to Seller in accordance with the provisions of this Agreement, and shall also execute and deliver affidavits

concerning the participation of brokers, a waiver of lien from Purchaser's broker and other customary closing documents as reasonably requested by the Purchaser, Purchaser's title insurance company or the closing attorney.

(3) Closing Memorandum. Purchaser and Seller shall execute and deliver a settlement statement, HUD-1 Form or closing memorandum disclosing the prorations, adjustments, funds paid and received by and to all parties at the Closing in reasonable detail, together with such other information concerning the Closing as the closing attorney should reasonably consider necessary and proper to properly and accurately document the Closing.

(c) Prorations and Adjustments to Purchase Price. The following prorations and adjustments shall be made between Purchaser and Seller at Closing, or thereafter if Purchaser and Seller shall agree:

(1) All city, state and county ad valorem taxes and similar impositions levied or imposed upon or assessed against the Property, hereinafter called the "Taxes", for the year in which Closing occurs shall be prorated as of the Closing Date. Regardless of whether the tax bills for 2015 are available, all such Taxes shall be prorated as of the Closing Date based upon the tax bills for 2014, and the Purchaser shall be responsible to pay or reimburse the Seller for all 2015 Taxes in excess of the Seller's share based on such proration. In the event any of the Taxes are due and payable at the time of Closing, the same shall be paid at Closing. If the Taxes are not paid at Closing, Seller shall deliver to Purchaser the bills for the Taxes promptly upon the receipt thereof and Purchaser shall thereupon be responsible for the payment in full of the Taxes within the time fixed for payment thereof and before the same shall become delinquent. The Seller shall have the exclusive right and option to continue to prosecute any tax appeal pending on the Closing Date for any year before the year of Closing, shall be solely responsible for any additional Taxes for such prior year, and shall be entitled to any refund or rebate for any such year. Purchaser shall have the sole right and responsibility to prosecute any appeal for taxes for the year of Closing.

(2) Any other items which are customarily prorated in connection with the purchase and sale of properties similar to the Property shall be prorated as of the Closing Date. All such prorations and adjustments to be made in conjunction with the Closing shall be made as of the Closing Date and shall be effective at Closing, except as otherwise provided and as further specified herein.

(d) Costs of Closing. At Closing:

(1) the Seller shall pay: (i) the fees of the Seller's attorney and any other advisors, (ii) the cost of satisfying all Monetary Encumbrances and removing the same from the public records, and (iv) any other costs which the Seller may expressly agree to pay pursuant to this Agreement, but no other charges;

(2) the Purchaser shall pay: (i) all recording costs, (ii) all costs of Purchaser's title examination, title commitment and any updates and Purchaser's title premiums, (iii) all costs of Purchaser's surveys and other due diligence costs incurred in connection with the Purchaser's due diligence investigation of the Property, (iv) any fees and costs of applying for and closing any loan which the Purchaser may elect to seek, (v) the fees of Purchaser's attorney and other advisors, and (vi) any other costs and expenses of the transaction which are not the obligation of any other person hereunder.

(e) Furniture, Fixtures and Equipment. Seller shall be allowed to remove all of its furniture, fixtures and equipment at the Property prior to Closing.

8. Warranties and Representations of the Seller / Limitations and Merger. Seller represents, warrants and covenants that, to the best of Seller's present knowledge:

(a) Seller is an Ohio corporation duly authorized to do business in the State of Georgia. Seller has the right, power, authority, discretion and capacity to sell the Property in accordance with the terms, provisions and conditions of this Agreement. The individuals who have executed this Agreement on behalf of the Seller in their representative capacities are duly constituted, appointed or elected and authorized to do so; any consent required by the Seller's members or shareholders to make such action effective has been obtained;

(b) Other than the Litigation, there are no lawsuits pending or threatened against or involving Seller which affect Seller's title to the Property;

(c) Other than the Litigation and information published and otherwise provided by Purchaser, including on Purchaser's website and elsewhere, Seller has not received any notice of pending or threatened claims, condemnations, planned public improvements, annexation, special assessments, rezoning or other adverse claims affecting the Property;

(d) On the Closing Date, Seller will not be indebted to any contractor, laborer, mechanic, materialman, architect or engineer for work, labor or services performed or rendered, or for materials supplied or furnished, in connection with the Property for which any such person could claim a lien against the Property;

(e) Seller will pay or cause to be paid promptly when due all city, state and county ad valorem taxes and similar taxes and assessments, all sewer and water charges and all other governmental charges levied or imposed upon or assessed against the Property between the Effective Date and the Closing Date, except that, if the Purchaser elects to close while the tenant remains in possession of the Property, the Seller shall not be responsible for utility charges for the month in which the Closing occurs.

The representations and warranties of Seller contained herein shall survive the Closing of the transaction contemplated hereunder but shall automatically expire six (6) months after the Closing Date.

EXCEPT AS SET FORTH HEREIN, SELLER DOES NOT MAKE, AND PURCHASER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES, ANY AND ALL IMPLIED WARRANTIES OR WARRANTIES ARISING BY OPERATION OF LAW, WITH RESPECT TO ANY AND ALL OF THE PROPERTY. Purchaser is willing to and shall accept the Property "AS IS, WHERE IS" "WITH ALL FAULTS" on the date of the Closing and shall be solely responsible for complying with, and with respect to the Property, waives and releases Seller of and from any and all claims, demands, liabilities and obligations of whatsoever kind or nature, direct or indirect, and whether contingent, conditional or otherwise, known or unknown, arising under, pursuant to, from or by reason of or in connection with, any and all federal, state and local laws, statutes, ordinances, rules, regulations, permits, or standards; and except as may be expressly set forth in this Agreement. PURCHASER, ON ITS OWN BEHALF AND ON BEHALF OF EACH OF ITS SUCCESSORS AND ASSIGNS AND EACH AND ALL OF ITS AND THEIR RESPECTIVE MEMBERS, OFFICERS, DIRECTORS, EMPLOYEES, PARENTS, AFFILIATES OR SUBSIDIARIES AND EACH OF THEIR RESPECTIVE SUCCESSORS AND ASSIGNS (COLLECTIVELY, THE "WAIVER PARTIES"), HEREBY RELEASES SELLER FROM, AND IRREVOCABLY AND UNCONDITIONALLY WAIVES ALL CLAIMS AND LIABILITY AGAINST SELLER FOR OR ATTRIBUTABLE TO, ANY AND ALL LOSSES, COSTS, CLAIMS, LIABILITIES, EXPENSES, DEMANDS OR OBLIGATIONS OF ANY KIND OR NATURE

WHATSOEVER, WHETHER KNOWN OR UNKNOWN AND FORESEEN OR UNFORESEEN, ATTRIBUTABLE TO THE PROPERTY OR THE OWNERSHIP AND OPERATION THEREOF, WHETHER ARISING OR ACCRUING BEFORE, ON OR AFTER THE CLOSING AND WHETHER ATTRIBUTABLE TO EVENTS OR CIRCUMSTANCES WHICH HAVE HERETOFORE OR MAY HEREAFTER OCCUR, INCLUDING ALL PRESENT OR FUTURE LOSSES, COSTS, CLAIMS, LIABILITIES, EXPENSES, DEMANDS AND OBLIGATIONS WITH RESPECT TO THE STRUCTURAL, PHYSICAL, OR ENVIRONMENTAL CONDITION OF THE PROPERTY INCLUDING CLAIMS OR LIABILITIES RELATING TO THE PRESENCE, DISCOVERY OR REMOVAL OF ANY HAZARDOUS MATERIALS IN, AT, UNDER OR ABOUT THE PROPERTY AND ANY CLAIMS FOR CONTRIBUTION RELATED THERETO.

9. Purchaser's Representations and Warranties. Purchaser represents, warrants and covenants that the Purchaser is a municipal corporation duly authorized and existing under the laws of the State of Georgia. Seller has obtained all necessary approvals of this Agreement from the Mayor and the City Council of the City of Sandy Springs, Georgia, and Purchaser has the right, power, authority, discretion and capacity to purchase the Property in accordance with the terms, provisions and conditions of this Agreement. The individual who has signed this Agreement on behalf of the Purchaser in his representative capacity is duly authorized to do so.

11. Default and Remedies.

(a) If the purchase and sale of the Property contemplated hereby does not close in accordance with the terms and conditions of this Agreement as the result of actions, failures or circumstances which constitute a breach or default by Purchaser of Purchaser's obligations under this Agreement, and if the Purchaser fails or refuses to cure such default within ten (10) days after delivery of notice thereof from Seller describing the default and, if any action is possible to cure the same, describing such action, Seller shall have the right to pursue any and all remedies available at law or in equity, including, but not limited to, specific performance of Purchaser's obligations in this Agreement and/or any and all damages suffered by Seller in connection with the relocation of its business from the Property

(b) If the purchase and sale of the Property contemplated hereby does not close in accordance with the terms and conditions of this Agreement as the result of actions, failures or circumstances which constitute a breach or default by Seller of Seller's obligations under this Agreement, and if the Seller fails or refuses to cure such default within ten (10) days after delivery of notice thereof from Purchaser describing the default and, if any action is possible to cure the same, describing such action, Purchaser shall have the right to pursue any and all remedies available at law or in equity, including, but not limited to, specific performance of Seller's obligations in this Agreement.

12. INTENTIONALLY DELETED.

13. INTENTIONALLY DELETED.

14. Assignment. This Agreement may not be assigned by Purchaser, in whole or in part, without the prior written consent of Seller. In its sole discretion and with or without good cause, Seller may withhold written consent to any assignment by Purchaser of this Agreement.

15. Binding Effect. This Agreement shall be binding upon and enforceable against, and shall inure to the benefit of, Purchaser and Seller and their respective legal representatives, successors and permitted assigns.

16. Brokerage Commission; Disclosure.

Seller and Purchaser hereby represent and warrant to the other that he/she/they have not dealt with any real estate Broker, agent or salesperson (other than Seller's Broker or Purchaser's Broker, as hereinafter defined) so as to create any legal right or claim in any such Broker, agent or salesperson for a commission or similar fee or compensation with respect to the negotiation and/or consummation of this Contract. Purchaser and Seller acknowledge that they are not represented by a Broker unless they have signed a brokerage agreement with said Broker. If any party hereto is not represented by a Broker, that party acknowledges full responsibility for protecting his/ her/their own interests.

17. Modification. This Agreement supersedes all prior discussions and agreements between Seller and Purchaser and their respective Brokers with respect to the purchase and sale of the Property and other matters contained herein, and this Agreement and the exhibits hereto contain the sole and entire understanding between Seller and Purchaser with respect thereto. This Agreement shall not be modified or amended except by an instrument in writing signed by or on behalf of Seller and Purchaser. No consent of the Brokers shall be required for any such modification or amendment unless such modification or amendment affects the Brokers' commission rights hereunder (excluding, however, any modification with respect to price).

18. Applicable Law. This Agreement shall be governed by, construed under and interpreted and enforced in accordance with the laws of the State of Georgia.

19. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

20. Time. Time is and shall be of the essence of this Agreement.

21. Captions. The captions and headings used in this Agreement are for convenience only and do not in any way restrict, modify or amplify the terms of this Agreement.

22. Exhibits. Each and every Exhibit referred to or otherwise mentioned in this Agreement is attached to this Agreement and is and shall be construed to be made a part of this Agreement by such reference or other mention at each point at which such reference or other mention occurs, in the same manner and with the same effect as if each Exhibit were set forth in full and at length every time it is referred to or otherwise mentioned.

23. Notices. All notices, requests, demands, tenders and other communications hereunder shall be in writing. Any such notice, request, demand, tender or other communications shall be deemed to have been duly given if personally delivered or on the third business day after being deposited in the United States Mail, Certified Mail, Return Receipt Requested, with all postage prepaid, to the address for each party set forth below its execution hereof. Any party, by written notice to the others in the manner herein provided, may designate an address different from that set forth herein.

Seller: Brian H. Linick, Esq.
The Sherwin-Williams Company
101 West Prospect Avenue
1100 Midland
Cleveland, Ohio 44115

With a copy to: Holt Ney Zatcoff & Wasserman, LLP
100 Galleria Parkway
Suite 1800
Atlanta, Georgia 30339
Attention: J. Scott Jacobson, Esq. and
Brian P. Cain, Esq.

Purchaser: City of Sandy Springs, Georgia
Attn: John McDonough, City Manager
7840 Roswell Road
Sandy Springs, Georgia 30350

With a copy to: Wendell K. Willard and Cecil G. McLendon, Jr.
City of Sandy Springs, Georgia
7840 Roswell Road
Sandy Springs, Georgia 30350

24. Survival. Except as otherwise specified in this Agreement, all conditions or stipulations shall merge with the closing herein.

25. Miscellaneous. If the final date for any period provided for herein for the performance of any obligation or for the taking of any action falls on Saturday, Sunday, or banking holiday, then the time of the period shall be deemed extended to the next day which is not a Saturday, Sunday, or banking holiday.

26. Special Stipulations. The following Special Stipulations, if conflicting or inconsistent with any of the preceding portions of this Agreement, or any exhibit, addendum attached hereto, shall control the rights and obligations of the parties and the interpretation of this Agreement:

(a) Release. At Closing, Seller and Purchaser will sign and perform their obligations under that certain Mutual Release and Settlement Agreement attached hereto and made a part hereof as Exhibit "B."

(b) Acquisition in Lieu of Condemnation. Pursuant to Section 1033 of the Internal Revenue Code, the parties acknowledge and agree that the acquisition of land contemplated in this Agreement is being undertaken in lieu and in settlement of a formal condemnation proceeding and the power of eminent domain being exercised by the Purchaser regarding the Property. The parties further acknowledge and agree that they have entered into this Agreement under an immediate threat of condemnation.

(c) At Closing, Purchaser shall, through counsel, sign a "Notice of Dismissal" of Purchaser's condemnation case against Seller (Civil Action File No. 2013CV236960) (the "Litigation") and file the original of such dismissal with the Court and serve counsel for Seller with a copy of same on the date of signing.

(d) At Closing, Seller shall, through counsel, sign a "Notice of Dismissal of Appeal" of Purchaser's appeal in the Litigation and file the original of such dismissal with the Court and serve counsel for Purchaser with a copy of same on the date of signing.

(e)

27. Time for Acceptance. This Agreement shall be regarded as an offer made by the Seller to the Purchaser on November ____, 2014 and is open for acceptance by the Purchaser on or

before 5:00 p.m. Eastern Daylight Savings Time on November 10, 2014 (the "Acceptance Date"). The only manner of acceptance binding upon the Seller shall be the execution of this Agreement by the Purchaser and receipt by the Seller of one fully executed copy not later than 5:00 p.m. on the Acceptance Date. The actual date of the receipt by the Seller of a fully executed copy of this Agreement is sometimes referred to herein as the "Effective Date." The Seller shall confirm the Effective Date by entering the date of receipt in the space provided below and returning one copy to the Purchaser.

28. Ratification and Formal Approval of This Agreement by the City Council of the City of Sandy Springs. This Agreement is subject to formal ratification and approval of the Agreement by the City Council of the City of Sandy Springs, Georgia on or before 11:59 P.M. on November 30, 2014 (the "Approval Deadline"). Should the Mayor and Council fail to ratify and approve this Agreement before expiration of the Approval Deadline, then the Agreement shall become void ab initio, and all funds held in escrow by the Escrow Agent shall be refunded to Purchaser. The Purchaser shall place the Agreement on the meeting agenda for the City Council of the City of Sandy Springs for ratification and approval at the first regularly-scheduled meeting following Purchaser's signing of this Agreement. By ratifying and approving this Agreement, the City of Sandy Springs, acting through its City Council, ratifies, approves and directs Purchaser's representatives and elected officials to sign and seal this Agreement, any document attached as an exhibit to this Agreement and any document attached as an exhibit to an exhibit to this Agreement, and to effectuate in full at the Closing the Property sale covered by the Agreement.

**[THE REMAINDER OF THIS PAGE IS LEFT BLANK INTENTIONALLY.
SIGNATURES BEGIN ON THE FOLLOWING PAGE.]**

IN WITNESS WHEREOF, Seller and Purchaser have caused this Agreement to be signed and sealed by their duly authorized representatives on the dates written below.

SELLER:

**THE SHERWIN-WILLIAMS COMPANY f/k/a
THE SHERWIN-WILLIAMS DEVELOPMENT
CORPORATION**

By:  (L.S.)

Print Name: Catherine M. Kilbane

Its: Senior Vice President

Seller confirms that the Effective Date of this Agreement is November ____, 2014.


Initial here

**[THE REMAINDER OF THIS PAGE IS LEFT BLANK INTENTIONALLY.
SIGNATURES CONTINUE ON THE FOLLOWING PAGE.]**

PURCHASER:

THE CITY OF SANDY SPRINGS, GEORGIA, a
municipal corporation of the State of Georgia

Signature Date: Dec 4, 2014

By: John McDonough
John McDonough
Its: City Manager

[CORPORATE SEAL
OF PURCHASER]

EXHIBIT "A"

PROPERTY DESCRIPTION

All that tract or parcel of land lying and being in Land Lot 89, of the 17th District, Fulton County, Georgia, bounded and described as follows:

Beginning at an iron pin set on the southwesterly line of Johnson Ferry Road (an 80 foot wide right of way), which iron pin is in the northeasterly corner of the within described parcel and also on the westerly side line of a 15 foot wide alley, and from said point or place of beginning; running thence along the westerly side line of said alley S 10 19 W 160.34 feet to an iron pin; thence turning and running N 74 24 W 26.39 feet to a found iron pin; thence continuing along other lands now or formerly of The Grand Union Company (1) N 76 01 51 W 96.59 feet to an iron pin and (2) N 02 20 04 W 169.38 feet to an iron pin on the southwesterly line of Johnson Ferry Road, aforementioned; which point is distant easterly 838.4 feet, as measured along the southwesterly line of Johnson Ferry Road, from the intersection of said Johnson Ferry Road and the easterly line of the right of way of Sandy Springs Circle; and thence along said southwesterly line of Johnson Ferry Road S 74 51 E 160.34 feet to the point or place of beginning.

By virtue of Warranty Deed from The Grand Union Company, a successor to Cobis-Sandy Springs, Inc. through dissolution, to The Sherwin-William Development Company, dated March 26, 1982, filed and recorded April 1, 1982, recorded in Deed Book 8097, Page 217, Fulton County Records.

EXHIBIT "B"

MUTUAL RELEASE AND SETTLEMENT AGREEMENT

This Mutual Release and Settlement Agreement (hereinafter the "Settlement Agreement") is made and entered into this ____ day of _____, 2014, by and between THE SHERWIN-WILLIAMS COMPANY f/k/a THE SHERWIN-WILLIAMS DEVELOPMENT CORPORATION, an Ohio corporation authorized to do business in the State of Georgia (hereinafter "Sherwin-Williams"), and the CITY OF SANDY SPRINGS, a municipal corporation organized and existing under the laws of the State of Georgia, (hereinafter called "Sandy Springs") (Sherwin-Williams and Sandy Springs are sometimes herein referred to collectively as the "Parties").

WITNESSETH:

WHEREAS, the Parties are involved in the litigation in the Superior Court of Fulton County, Georgia styled City of Sandy Springs, Georgia v. The Sherwin-Williams Development Corporation et al., Fulton County Superior Court, Civil Action No. 2013CV236960 (the "Litigation");

WHEREAS, in the Litigation, Sandy Springs seeks to acquire certain real estate owned by Sherwin-Williams located at 245 Johnson Ferry Road, Sandy Springs, Georgia 30328 (Tax Parcel No. 17-0089-LL-114-8) (the "Property") via eminent domain after payment of just and adequate compensation;

WHEREAS, the Parties desire to settle all claims between them, including all claims asserted or that might have been asserted in the Litigation or in any way connected with the acquisition of the Property, without admission of liability by either of them, on the terms and conditions as hereinafter set forth, thereby avoiding the burdens, risks and expenses of litigation;

WHEREAS, the Parties intend this Settlement Agreement to resolve any and all disputes currently existing between them regarding the Property, including the Litigation;

NOW, THEREFORE, in consideration of the mutual releases and other promises, obligations, agreements and covenants made hereunder and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Incorporation of Recitals:** The above recitals are true and correct and are made an express part of this Settlement Agreement.
2. **Sale of the Property to Sandy Springs:** On the date hereof, Sherwin-Williams has sold the Property to Sandy Springs pursuant to the terms of a mutually agreed upon Purchase and Sale Agreement (the "Purchase Agreement") for the sum of **TWO MILLION AND 00/100 DOLLARS (\$2,000,000.00)** (the "Purchase Price"). The Purchase Price is being paid at the Closing Date, as defined in the Purchase Agreement.
3. **Intentionally Deleted.**
4. **Sherwin-Williams' Release:** For and in consideration of the payment set forth in Section 2, the release in Section 5, and other good and valuable consideration, the

receipt and sufficiency of which is hereby duly acknowledged, Sherwin-Williams settles, releases and compromises all claims, including but not limited to claims asserted or that might have been asserted by it in the Litigation or otherwise in connection with the Property (except for Sandy Springs' obligations in the Purchase Agreement), and hereby irrevocably remises, releases, acquits, and forever discharges Sandy Springs (and also each of its representatives, servants, agents, attorneys, employees, officers, directors, shareholders, partners, subsidiaries or parents, affiliated companies, predecessors-in-interest, successors-in-interest and assigns, and their respective successors and assigns) from any and all claims (including costs, expenses, monies due or owing, obligations, claims, damages, demands, liabilities, defaults, actions and causes of action of every kind and character, both known and unknown, including those past and present and whether arising by statute, common law or otherwise), including but not limited to claims asserted or that might have been asserted by either party in the Litigation or in connection with the Property, and any related claims for attorneys' fees or other litigation expenses or costs.

5. **Sandy Springs' Release:** For and in consideration of the sale of the Property and the Release set forth in Section 4 above, and other good and valuable consideration, the receipt and sufficiency of which is hereby duly acknowledged, Sandy Springs settles, releases and compromises all claims, including but not limited to claims asserted or that might have been asserted by it in the Litigation or otherwise in connection with the Property (except for Sherwin-Williams' obligations in the Purchase Agreement), and hereby irrevocably remises, releases, acquits, and forever discharges Sherwin-Williams (and also each of its representatives, servants, agents, attorneys, employees, officers, directors, shareholders, partners, subsidiaries or parents, affiliated companies, predecessors-in-interest, successors-in-interest and assigns, and their respective successors and assigns) from any and all claims (including costs, expenses, monies due or owing, obligations, claims, damages, demands, liabilities, defaults, actions and causes of action of every kind and character, both known and unknown, including those past and present and whether arising by statute, common law or otherwise), including but not limited to claims asserted or that might have been asserted by either party in the Litigation or in connection with the Property, and any related claims for attorneys' fees or other litigation expenses or costs.
6. **Dismissal of Litigation:** Contemporaneously with the conveyance of the Property under the Purchase Agreement, as referenced in Section 2 above: (a) Sandy Springs shall sign a "Notice of Dismissal" in the form attached hereto and shall file the original of such dismissal with the Court and serve counsel for Sherwin-Williams with a copy of the Notice of Dismissal on the date of filing; and (b) Sherwin Williams shall sign a "Notice of Dismissal of Appeal" in the form attached hereto and shall file the original of such dismissal with the Court and serve counsel for Sandy Springs with a copy of the Notice of Dismissal of Appeal on the date of filing
7. **Binding Effect:** This Settlement Agreement shall be binding upon the Parties any and all successors and assigns of the Parties.
8. **No Assignment of Claim:** Each of the Parties hereby represents and warrants that it holds all claims and rights asserted, or that might have been asserted, in the Litigation and that it has not sold, transferred or otherwise conveyed any of such claims or rights (including the power or authority to bring such claims in its name,

as its representative, or otherwise) against the other party to any other person or entity. Each of the Parties hereby agrees, to the extent permitted by law, to indemnify and hold harmless the other against any claim, demand, debt, liability, account, reckoning, obligation, cost, damage, expense, lien, action or actions including but not limited to the payment of attorneys' fees and costs actually incurred whether or not litigation be commenced, based on or arising out of or in connection with any such sale, transfer or other conveyance of such claims or rights.

9. **No Release from Certain Obligations:** Notwithstanding anything contained in this Settlement Agreement to the contrary, the provisions of this Settlement Agreement are not intended to, nor do they, release the Parties, or any of them, from any and all executory obligations contained in this Settlement Agreement or any obligations set forth in the Purchase Agreement.
10. **No Admission of Liability by the Parties:** This Settlement Agreement does not constitute, and will not in any way be construed as, an admission of liability or fault by any of the Parties.
11. **Attorneys' Fees and Costs:** The Parties shall each bear their respective attorneys' fees and costs associated with the Litigation and the negotiation and drafting of this Settlement Agreement.
12. **Governing Law:** This Settlement Agreement is made and entered into in the State of Georgia and shall, in all respects, be interpreted, enforced and governed under the laws of the State of Georgia.
13. **Headings:** The headings that have been used to designate the various sections of this Settlement Agreement are solely for convenience in reading and for ease of reference and shall not be construed in any event or manner as interpretive of this Settlement Agreement.
14. **Representation by Independent Legal Counsel:** The Parties each represent and warrant that they have been represented by counsel in connection with the Litigation and the negotiation and execution of this Settlement Agreement, that they fully understand their rights and obligations under this Settlement Agreement, that they have discussed such rights and obligations with their respective counsel and that they have carefully read and understand all provisions of this Settlement Agreement. Each Party is aware that it may hereafter discover claims or facts in addition to or different from those now known or believed to be true with respect to any matter. Nevertheless, the Parties hereby expressly state and execute their intention to fully, finally, and forever settle all matters and release all claims as set forth herein.
15. **Effective Releases:** The Parties intend for the releases in this Settlement Agreement to be binding upon them notwithstanding any contrary provision of law.
16. **Entire Agreement; Only Consideration; Modification; Assignment:** The Parties expressly acknowledge and affirm that the only consideration for their execution of this Settlement Agreement is that stated herein, and that no other promise or agreement of any kind has been made to, with, or among them by any

person or entity in order to cause them to execute this Settlement Agreement. This Settlement Agreement contains the entire understanding and agreement of the Parties with regard to the matters set forth in it, and shall be binding upon and inure to the benefit of each of the Parties, jointly and severally, and the past, present and future agents, attorneys, employees, officers, directors, subsidiaries and parents, affiliated companies, partners, predecessors-in-interest, successors-in-interest, assigns, trustees in bankruptcy, heirs, executors, administrators, guardians or otherwise, and any other representative or entity acting on behalf of, pursuant to, or by virtue of the rights of any of the Parties. This Settlement Agreement may not be modified or amended except by a writing signed by all of the parties or their respective heirs, successors or assigns. The assignment of any rights and obligations hereunder is subject to the written consent of all of the Parties.

17. **Further Assurances:** The Parties agree to execute such other documents as may be reasonably necessary to carry out the intent and purpose of this Settlement Agreement.
18. **Counterparts:** This Settlement Agreement may be executed in multiple counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, the undersigned have caused this Mutual Release and Settlement Agreement to be signed by their duly authorized representatives.

(Signatures on Following Page)

**THE SHERWIN-WILLIAMS COMPANY f/k/a THE SHERWIN-WILLIAMS
DEVELOPMENT CORPORATION**

By: _____ (L.S.)

Print Name: _____

Date: _____

**THE CITY OF SANDY SPRINGS, GEORGIA,
a municipal corporation of the State of Georgia**

_____ (L.S.)

John McDonough

Its: City Manager

Date: _____

RESOLUTION NO. 2014-12-__

**STATE OF GEORGIA
COUNTY FULTON**

**A RESOLUTION TO APPROVE THE PURCHASE AND SALE AGREEMENT
WITH THE SHERWINN-WILLIAMS COMPANY FOR PROPERTY LOCATED
AT 245 JOHNSON FERRY ROAD IN THE CITY OF SANDY SPRINGS**

WHEREAS, the City has previously approved the City Center development plan, calls for the City to acquire property to fulfill the goal of enhancing the quality of life, promoting economic development, and strengthening the sense of community within the City of Sandy Springs; and

WHEREAS, the property located at 245 Johnson Ferry Road is within the approved City Center; and

WHEREAS, the City has engaged in discussion and negotiations resulting in the owner agreeing to sell the property to the City for Two Million Dollars (\$2,000,000.00), such sum includes transfer of ownership of the property, settlement of any possible claims of lost business, and any possible relocation costs;

WHEREAS, the Mayor and Council desire and believe developing the City Center is in the best interest of the citizens of the City of Sandy Springs.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Sandy Springs, Georgia while in regular session on _____, 2014, at __:00 p.m. as follows:

In order to create the City Center, the Mayor and Council approve the Purchase and Sale Agreement with the Sherwin-Williams Company to purchase property located at 245 Johnson Ferry Road in the City of Sandy Springs for Two Million Dollars (\$2,000,000.00). The Mayor and City Manager are authorized to execute any documents necessary to further the acquisition of the subject property, subject to final approval by legal and finance departments.

APPROVED AND ADOPTED this _____ day of _____, 2014.

Approved: _____, 2014

Rusty Paul, Mayor

Attest:

Michael Casey, City Clerk
(Seal)